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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: William Sonnier et al.

Attorney Docket No. 503472.000009

Serial No.: 10/060,022

Filing Date: January 28, 2002

Group Art Unit: 1616

Examiner Name: Badio

Title: ***PROCESS OF EXTRACTING AND PURIFYING PHYTOSTEROLS
AND PHYTOSTANOLS FROM TALL OIL PITCH***

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OFFICE OF PETITIONS

RENEWED PETITION UNDER 37 CFR 1.137(B)

MAIL STOP: PETITION

Commissioner of Patents and Trademarks

P.O. Box 1450

Alexandria, VA 22313-1450

Attention: Frances Hicks
Petition Examiner

Dear Examiner:

We are in receipt of the Decision on the Petition to Revive filed May 29, 2007, which was DISMISSED. In light of additional evidence obtained by Petitioner, Petitioner respectfully submits this "Renewed Petition".

The original Petition was dismissed due to lack of evidence as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional; therefore the Examiner is requesting additional documentation such as returned checks or a Declaration by Ms. Susan Ben-Oliel, the previous attorney of record to this application, attesting on a personal knowledge basis as to the mailing of the original Petition. Petitioner is submitting the following documents in support of the Petition to Revive previously filed on May 29, 2007.

1. Declaration of Susan Ben-Oliel in support of the Petition to Revive filed on May 29, 2007;

2. Schedule A – Copy of check No. 27, made payable to the Commissioner of Patents and Trademarks in the amount of \$465.00 for the filing fee for a 3-month extension to time;
3. Schedule B – Copy of check No. 40, made payable to the Commissioner of Patents and Trademarks in the amount of \$740.00, petition fee;
4. Schedule C – Copy of check No. 41, made payable to the Commissioner for Patents and Trademark in the amount of \$475.00 for Extensions fees; and
5. Schedule D – Note to the File dated September 16, 2005.

We believe that Ms. Ben-Oliel has provided the required information based on personal knowledge, as to mailings of these documents.

Paragraphs 4, 5, 6, 7, and 8 of the Declaration address the Examiner's concern as to Ms. Ben-Oliel's Canadian address and whether in fact these documents were deposited with the U.S. Postal services as required by CFR 1.8 (a).

Paragraph 18 addresses the Examiner's concerns regarding the lapse of time without taking the necessary steps to follow up regarding petition filed.

For the reasons stated above, Petitioner respectfully requests that the above-referenced U. S. Patent Application No. 10/060,022 be reinstated and Applicant respectfully requests the issuance of the Notice of Allowance.

We believe that all fees have been paid by Thompson & Knight but the Commissioner is hereby authorized to charge any deficiencies related to the previously paid fees or credit any over payment to Deposit Account No. 20-0821 of THOMPSON & KNIGHT LLP.

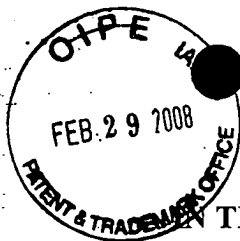
Should additional information be required, please do not hesitate to call me.

Respectfully submitted,



James J. Murphy
Reg. No. 34,503
THOMPSON & KNIGHT LLP
1700 Pacific, Suite 3300
ATTORNEY FOR APPLICANT

Date: Feb. 29, 08



THE UNITED STATES PATENT OFFICE

In Re Application of William E. Sonnier
Application No 10/060, 022
Filing date: 01/28/2002
Examiner: Badio
Art Unit: 1616
Date: February 25, 2008

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DECLARATION OF SUSAN BEN-OLIEL

- 1) I was the agent of record in regards to US Patent Application Serial No. 10/060,022 (the "Application"), which I drafted and filed on January 28, 2002;
- 2) I received a first office action on the merits of the Application dated March 21, 2003 from Examiner Badio;
- 3) After careful consideration of this matter, and consultation with the inventors in regards to the art cited, on September 19, 2003, I submitted an office action response in which the one claim rejected by the examiner was deleted and the Abstract amended in conformity with the examiner's comments;
- 4) This response was submitted to US Post Office by mail slot deposit in Point Roberts Washington USA, as permitted under the US Patent Rules, along with a Certificate of Mailing;
- 5) I personally drove to this mail outlet in the Point Roberts, which was an approximate 30 minutes drive from my office in non-rush hour. I *routinely* made this trip across the small Point Roberts border and would often "save up" a number of documents for filing before making the trip. Many other patent agents and lawyers in Vancouver availed themselves of the mail filing services in Point Roberts, it being such a close, convenient US community;
- 6) As a sole part-time patent agent/lawyer in 2003, with a small client base of approximately four biotechnology companies, *and before the wide-spread acceptance of various electronic filing means*, it was not unusual for me to make this trip to Point Roberts two to three times per month;

- 7) In my car, I would have, at any given time, at least \$30 in US stamps that I could affix to mailings for which "Certificates of Mailing" were allowable. I would also have a stack of blank Express Mail Certificates;
- 8) I drove to Point Roberts in the mid afternoon of September 19, 2003 (in accordance with my usual practice) to mail the response, I weighed the envelope in the small scale provided in the public area of the postal outlet, affixed sufficient postage according to the chart provided, and slipped the envelope into the "non-local" mail bin. Within this envelope was a cheque in the amount of \$456 (drawn on my US funds bank account). I copy of the cheque is attached as Schedule "A";
- 9) My office assistant at the time was advised by me to diarize the file and bring it forward in six months to ensure that we received further correspondence from the US Patent Office.
- 10) Although my assistant indicated to me that she had taken this step, it appears that, in error, no entry was made to bring this case forward in March 2004. As this assistant no longer works for me, given the passage of time, and I am not aware of her whereabouts, I was not able to secure a Statement confirming these facts from her.
- 11) In July and August 2004, as I was working on the PCT National phase entry of the corresponding PCT application, I became aware that no follow up document has been received for the present US application.
- 12) I was informed after phoning the US Patent Office on September 8, 2004 that the present application had become abandoned. This abandonment was clearly unintentional.
- 13) I immediately and without delay began to review file material and instructed my office assistant to work with me in preparing revival documents;
- 14) I filed the Petition for Reinstatement of the Application on September 15, 2004 with two cheques (\$740 and \$475) drawn on my US funds bank account. A copy of both cheques are attached as Schedule "B" and Schedule "C" respectively. I was not able to find returned originals of these cheques. As above, I personally drove down to Point Roberts in order to secure a mail filing. As I had been concerned about the fact that the response appeared not to have ben received at the US Patent Office, my file notes indicated that I wished to use an Express Mail filing instead of Certificate of

Mailing. Unfortunately, due to an unusually long border crossing line that day, the window of the Post Office (with attendant) was closed by the time I arrived. I was forced to use a Certificate of Mailing. As per my usual practice, I weighed the envelope, affixed sufficient postage and mailed it in the "Non-local" mail bin.

- 15) I was not aware of the time frame that would be required by the US Patent Office to Process a Petition to Revive. Given the fact that I had, at that very time, US applications that had been filed and pending for several years *without any communication from the US Patent Office*, I was not alarmed by the elapse of time.
- 16) Despite the fact that I was not unduly alarmed, I prepared reminder letters on February 15, 2005 and July 20, 2005. I suspected that the process and review would not be timely.
- 17) I have file notes indicating that a phone call was made by my assistant to the General number of the US Patent Office on September 16, 2005. A copy of the file note is attached as Schedule "D". While I asked at that time for her to diarize an expected receipt of communication from the US Patent Office, it now appears that she may have tagged a not clearly defined reminder in connection with a related family of applications and not this US application.
- 18) From the Fall of 2005 and onwards for the next two years in succession, I was addressing a number of serious crises in my personal life including the bankruptcy of my husband's company, his loss of employment, our financial issues and the sale of our home. It was during this time, that I lost track of this file and did not adequately take steps to follow up.
- 19) It was never my intent, at any time, to allow this application to become abandoned. I do not believe that I was wholly deficient in my actions on this case. My intent was to continue the prosecution of this application after the Petition procedure had occurred. I misunderstood the length of time the Petition process was to have taken otherwise I know that I certainly would have followed up more diligently.
- 20) I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine, or imprisonment, or both, under *Section 1001*

of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Signed By Susan Ben-Oliel on February 28, 2008, at Vancouver, BC Canada

Susan M. Ben-Oliel



SCHEDULE A

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027

SUSAN M BEN-OLIEL
2983 WEST 41ST AVE
VANCOUVER, BC V6N 3C8

U.S. FUNDS

DATE Sept. 19/03

Commissioner of Patents & Trademarks \$ 465
- four hundred + sixty four -

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5559 DUNBAR STREET AT 41ST AVENUE

VANCOUVER, BRITISH COLUMBIA V6N 1W5

10/060,022 (3 mos
Extn)

MEMO

Pitch Extn Improv'ts

Susan M. Ben-Oliel

SCHEDULE B

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SUSAN M BEN-OLIEL
2983 WEST 41ST AVE
VANCOUVER, BC V6N 3C8

040

U.S. FUNDS

DATE Sept 15-04

Commissioner Pokorski, Trademarks \$ 740

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VANCOUVER, BRITISH COLUMBIA V6N 1W5

00430

U.S. DOLLAR ACCOUNT

MEMO 10,000,000 (petition fees)

Susan M Ben-Oliel NP

SCHEDULE C

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SUSAN M BEN-OLIEL
2983 WEST 41ST AVE
VANCOUVER, BC V6N 3C8

041

U.S. FUNDS

DATE SEP 15-04

Commissioner Patents + Trademarks
- fee involved + seventy-five \$ 475

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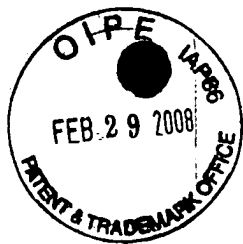
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10/06/04, 002

(Extension Fees)

Susan M Ben-Oliel

AP



SCHEDULE D

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NOTE TO FILE (INTERNAL USE ONLY):

DATE: SEPT 16-05

AUTHOR: DIANE CHESTER

RE: PITCH EXTRACTION IMPROVEMENTS
US PATENT APPLN 10/060, 022

COMMENT:

SMB requested that I follow up on Petition to USPTMO. Called Examiner: result voicemail. Called General Number: asked for Petitions: go voicemail---left message.